

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)	
)	
Case No. 39576)	
)	
Wilderness Act Claims:)	
75-13605, 75-13606, 77-12774,)	
77-12775, 77-12776, 81-11191,)	
82-11120)	
)	
Multiple-Use and Sustained-Yield Act)	
Claims:)	
63-25239, 65-19559, 71-10444,)	
77-11791, 77-11828, 78-10669,)	
79-10764, 81-10501, 81-10623,)	
82-10523, 82-10953, 82-10967,)	
82-10972, 83-10806, 84-10884,)	
65-19472, 65-19505, 81-10679,)	
82-10955, 65-19487, 71-10364,)	
71-10368, 71-10370, 71-10372,)	
72-11015, 77-10665, 78-10564,)	
63-25279, 63-25347, 63-25430,)	
71-10416, 72-11183, 72-11218,)	
75-13504, 77-10986, 82-10950,)	
83-10807)	
)	
Hells Canyon National Recreation Area)	
79-13597)	
)	

Wilderness Act, MUSYA and HCNRA Claims
Consolidated Subcases 75-13605, 63-25239 and 79-13597
ORDER GRANTING AND DENYING UNITED STATES' MOTIONS FOR SUMMARY JUDGMENT ON
RESERVED WATER RIGHTS CLAIMS

- A. United States' *Motion for Summary Judgment* on reserved water right claims in The Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas. **Granted.**
Clive Strong, Deputy Attorney General, for the State of Idaho
Randall J. Bramer, Department of Justice, for United States Forest Service
Don A. Olowinski, Hawley Troxell Ennis & Hawley, for Big Bend, Boise-Kuna,
New York, and Wilder Irrigation Districts and City of Ketchum
Ronald Schindler, Root & Schindler, for Hecla Mining Company
H. W. Rettig, Rettig & Rosenberry, for Farmer's Co-op Ditch Co. Ltd.
Jeffrey C. Fereday, Givens Pursley & Huntley, for Dewey Mining Company,
Potlatch Corporation, Thunder Mountain Gold Company, and USMX Inc.
John A. Rosholt, Rosholt Robertson & Tucker, for Milner Irrigation District
and North Side and Twin Falls Canal Companies
John T. Schroeder, Schroeder & Lezamiz, for Baltzor Cattle Company,
Barbara & Floyd Horn, Chipmunk Grazing Assn., Elias & Inez Jaca,

Glens Ferry Grazing Assn, Gordon King, and Seven High Ranch
 Josephine P. Beeman, Beeman & Hofstetter, for Amalgamated Sugar Company;
 Basic American Inc.; Ore-Ida Foods Inc.; Lamb-Weston; and Cities of
 Challis, Pocatello, and Salmon
 Ray Rigby, Rigby Thatcher Andrus Rigby Kam & Moeller, for Egin Bench
 Canal Inc.; North Fremont Canal Systems; Snake River Valley Irrigation;
 Enterprise, Idaho, New Sweden, and Progressive Irrigation Dists.; and
 Burgess and Peoples Canal & Irrigation Cos.
 Roger D. Ling, Ling Nielsen & Robinson, for Aberdeen-Springfield Canal
 Co. and Burley and Falls Irrigation Districts
 Scott L. Campbell, Elam & Burke, for Thompson Creek Mining
 Terry T. Uhling, for JR Simplot Company, Agland Inc., Agwild Inc.,
 Bar-U-Inc., Buck Creek Ranch Inc., Glen Dale Farms Inc., JR Simplot
 Company, ML Investment Company, Potato Storage Inc., Simplot
 Cattle Company, Simplot Dairy Products Inc., Simplot Livestock
 Company, Simplot Meat Products Inc., SSI Food Services Inc., SSI
 Foods Inc., Sunnyslope Orchards Part., and TM Ranch Company
 William K. Fletcher, Parsons Smith Stone & Fletcher, for Minidoka Irrigation
 District
 Harrison Canal & Irrigation, *Pro Se*
 Gary A. Demott, *Pro Se*
 Jerry W. Badley, *Pro Se*
 Clayton M. Badley, *Pro Se*

B. United States' *Motion for Summary Judgment* on reserved water right claims in the national forests based on the Multiple-Use Sustained-Yield Act. **Denied.**

Cheri Copsey, Deputy Attorney General, for the State of Idaho
 Randall J. Bramer, Department of Justice, for United States Forest Service
 Don A. Olowinski, Hawley Troxell Ennis & Hawley, for Big Bend, Boise-Kuna,
 New York and Wilder Irrigation Districts and City of Ketchum
 Ronald Schindler, Root & Schindler, for Hecla Mining Company
 H. W. Rettig, Rettig & Rosenberry, for Farmer's Co-op Ditch Co. Ltd.
 Jeffrey C. Fereday, Givens Pursley & Huntley, for Dewey Mining Company,
 Potlatch Corporation, Thunder Mountain Gold Company, and USMX Inc.
 James C. Tucker, Rosholt Robertson & Tucker, for Idaho Power Company
 Bruce M. Smith, Rosholt Robertson & Tucker, for Boise Cascade Corporation
 John A. Rosholt, Rosholt Robertson & Tucker, for Milner Irrigation District
 and North Side and Twin Falls Canal Companies
 Josephine P. Beeman, Beeman & Hofstetter, for Amalgamated Sugar Company;
 Basic American Inc.; Ore-Ida Foods Inc.; Lamb-Weston; and Cities of
 Challis, Pocatello, and Salmon
 Ray Rigby, Rigby Thatcher Andrus Rigby Kam & Moeller, for Egin Bench
 Canal Inc.; North Fremont Canal Systems; Snake River Valley Irrigation;
 Enterprise, Idaho, New Sweden and Progressive Irrigation Dists.; and
 Burgess and Peoples Canal & Irrigation Cos.
 Roger D. Ling, Ling Nielsen & Robinson, for Aberdeen-Springfield Canal
 Co. and Burley and Falls Irrigation Districts
 Scott L. Campbell, Elam & Burke, for Thompson Creek Mining
 Terry T. Uhling, for JR Simplot Company, Agland Inc., Agwild Inc.,
 Bar-U-Inc., Buck Creek Ranch Inc., Glen Dale Farms Inc., JR Simplot
 Company, ML Investment Company, Potato Storage Inc., Simplot
 Cattle Company, Simplot Dairy Products Inc., Simplot Livestock
 Company, Simplot Meat Products Inc., SSI Food Services Inc., SSI
 Foods Inc., Sunnyslope Orchards Part., and TM Ranch Company
 William K. Fletcher, Parsons Smith Stone & Fletcher, for Minidoka Irrigation
 District

Willis D. & Betty G. Deveny, *Pro Se*
Gary & Elaine Funck, *Pro Se*
Harrison Canal & Irrigation, *Pro Se*
Gary A. Demott, *Pro Se*
Ted & Helen Malone, *Pro Se*
Howard Cutler, *Pro Se*
Doyle & Judi Leuzinger, *Pro Se*
Margaret D. Wetergard, Salmon River Hereford Ranch, *Pro Se*
Harold Horton, *Pro Se*
Sally Dahl, *Pro Se*
Gary Kimble, *Pro Se*
Madge E. Yacomella, *Pro Se*
Jerry W. Badley, *Pro Se*
Challis Irrigation Company, *Pro Se*
Thomas V. McGowan, Jose Ditch Company, *Pro Se*
Clayton M. Badley, *Pro Se*
Jay C. Neider, *Pro Se*

C. United States *Motion for Summary Judgment* on reserved water right claims in the Hells Canyon National Recreation Area. **Granted.**

Clive Strong, Deputy Attorney General, for the State of Idaho
Randall J. Bramer, Department of Justice, for the United States Forest Service
Bruce M. Smith, Rosholt Robertson & Tucker, for Evergreen Land & Timber
James C. Tucker, Rosholt Robertson & Tucker, for Idaho Power Company

I. PROCEDURAL HISTORY

The matters presented on summary judgment involve the legal issue of whether the United States is entitled to reserved water rights under various federal acts. First, the United States claims reserved rights in The Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas under the Wilderness Act, Act of September 3, 1964, Pub. L. No. 88-577, 78 Stat. 890 (1996) (codified at 16 U.S.C. §§ 1131-36). Second, the United States claims reserved water rights in the Boise, Payette, Clearwater, Nez Perce, Sawtooth, and Salmon-Challis National Forests under the Multiple-Use Sustained-Yield Act, Act of June 12, 1960, Pub. L. No. 86-517, 74 Stat. 215 (1960) (codified at 16 U.S.C. §§ 528-31) (MUSYA). Finally, the United States claims all the unappropriated flows originating in the Hells Canyon National Recreation Area under the Hells Canyon National Recreation Area Act, Act of December 31, 1975, Pub. L. No. 94-199, 89 Stat. 1117 (1975) (codified at 16 U.S.C. §§ 460gg(1)-(13)) (HCNRA). Cross-motions for summary judgment were filed alleging the United States is not entitled to reserved water rights for any of the areas in dispute.

Hearings were held on these motions and cross-motions for summary judgment. The issues before the court are:

- A. **Whether, as a matter of law, the United States is entitled to a reserved water right for the Selway-Bitterroot Wilderness Area--September 3, 1964, priority date; the Gospel-Hump Wilderness Area--February 24, 1978, priority date; and The Frank Church-River of No Return Wilderness Area--July 23, 1980, priority date.**

- B. Whether, as a matter of law, the United States is entitled to a reserved water right for certain national forests based on the purposes of the Multiple-Use Sustained-Yield Act with a June 12, 1960, priority date.**
- C. Whether, as a matter of law, the United States is entitled to a reserved water right for the Hells Canyon National Recreation Area with a December 31, 1975, priority date.**

II. STANDARD OF REVIEW

The standard of review on a motion for summary judgment is well established.

In summary judgment proceedings the facts are to be liberally construed in favor of the party opposing the motion, who is also to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. Summary Judgment must be granted if the court determines that the “pleadings, depositions, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

Strongman v. Idaho Potato Commission, 129 Idaho 766, 771 932 P.2d 889, 894 (1997) (quoting I.R.C.P. 56(c)). “If the record supports conflicting inferences, or if reasonable minds might reach different conclusions, summary judgment must be denied.” *Id.* All three matters for summary judgment present no factual disputes. Their resolution is purely a question of law.

III. FEDERAL RESERVED RIGHTS

A state has plenary control of water located within its territory. *Kansas v. Colorado*, 206 U.S. 46 (1907). A claim to a federal reserved water right is an exception to the state’s plenary control of water. *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690 (1899). A reserved water right must be based on a reservation of land. *Arizona v. California*, 373 U.S. 546 (1963). Reserved water rights may be express or implied. *United States v. New Mexico*, 438 U.S. 696 (1978). An express reservation of water is created by the explicit language in the Act creating the land reservation. *Id.* If there is no express reservation of water, an implied reserved water right may be granted if the following three criteria are satisfied:

- (1) An implied reservation of water exists only if necessary to fulfill the primary, not the secondary, purpose for which the reservation of land was created, *Id.* at 702;
- (2) The water claimed must be the minimum amount necessary to achieve the purposes of the reservation, *Id.* at 700; and
- (3) Without the minimum amount of water claimed, the purposes of the reservation must entirely be defeated, *Id.*

The United States’ claims under the Wilderness Act, the MUSYA, and the HCNRA Act will be analyzed accordingly.

IV. WILDERNESS AREAS

THE UNITED STATES IS ENTITLED TO A FEDERAL RESERVED WATER RIGHT FOR ALL UNAPPROPRIATED FLOWS IN THE FRANK CHURCH-RIVER OF NO RETURN, THE SELWAY-BITTERROOT, AND THE GOSPEL-HUMP WILDERNESS AREAS.

- A. The Wilderness Areas Are Reservations of Land and the Purposes of the Land Reservation Support a Reservation of Water.**

The United States requests summary judgment for seven reserved water right claims for all unappropriated flows in The Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas. In the alternative, the United States seeks legal entitlement to the waters of these wilderness areas with quantification

of these rights to be determined in subsequent proceedings. The claims are based on the purposes of the Wilderness Act of 1964.

A claim to a federal reserved water right must be based on a reservation of land. *Arizona v. California*, 373 U.S. 546 (1963). A land reservation is established where two criteria are satisfied: (1) land is withdrawn from the public domain and (2) the withdrawn land is assigned a specific federal purpose. *United States v. City and County of Denver*, 656 P.2d 1, 5 (Colo. 1982); *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).¹ Applying this two-part test, the court finds the three wilderness areas at issue to be reservations of land.

First, designation of the Selway-Bitterroot Wilderness Area under the Wilderness Act of 1964; designation of the Gospel-Hump Wilderness Area under the Endangered American Wilderness Act of 1978, Act of February 24, 1978, Pub. L. No. 95-237, 92 Stat. 46 (1978) (codified at 16 U.S.C. § 1132); and designation of The Frank Church-River of No Return Wilderness Area under the Central Idaho Wilderness Act of 1980, Act of July 23, 1980, Pub. L. No. 96-312, 94 Stat. 948 (1980), and Act of March 14, 1984, Pub. L. No. 98-231, 98 Stat. 60 (1984) (codified at 16 U.S.C. § 1132), continued the withdrawal from the public domain of these areas.

Second, the three wilderness areas were established for the primary purpose of wilderness preservation. In arriving at this conclusion, it is important to understand the Wilderness Act's historical development. Prior to passage of the Wilderness Act, the national forests were administered for numerous purposes under the Organic Act of 1897. Between 1929 and 1939, the Secretary of Agriculture authorized the Chief of the National Forest Service to create "primitive," "wilderness," and "wild" areas within the national forests. *See*, H.R. REP. NO. 2521, 87th Cong., 2d Sess. 11 (1962).

Congress then passed the MUSYA in 1960. Under that Act, national forests could be administered for numerous additional purposes, including wilderness purposes: "The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of this Act." 16 U.S.C. § 529. Having broad authority to regulate national forests for wilderness purposes, the inquiry, then, is why a new statute, the Wilderness Act of 1964, was adopted.

Prior to the Wilderness Act, wilderness purposes were protected in the national forests only as a matter of administration. Concerned that the executive agency authorized to manage the national forest system might not sufficiently or permanently manage the national forests for wilderness purposes, Congress passed a new act, which legislatively recognized certain designated areas where wilderness purposes would be elevated above all other preexisting purposes. Prior to passage of the Wilderness Act, the House Committee on Interior and Insular Affairs reported:

Having been established by administrative action of the executive branch, any of the wilderness, wild and primitive areas could be similarly declassified and abolished by administrative action. In the alternative the administrators could, if they so desired, change the rules governing the uses allowed or prohibited within such areas.

A statutory framework for the preservation of wilderness would permit long range planning and assure that no future administrator could arbitrarily or capriciously either abolish wilderness areas

¹ Public domain land includes lands open to settlement, public sale, or other disposition under the federal public land laws and which are not exclusively dedicated to any specific governmental or public purpose. *See, e.g., Federal Power Comm'n v. Oregon*, 349 U.S. 435 (1955); *United States v. Minnesota*, 270 U.S. 181 (1926); *City and County of Denver* at 5.

that should be retained or make wholesale designations of additional areas in which use would be limited.

This committee accordingly endorses the concept of a legislatively authorized wilderness preservation system. Furthermore, by establishing explicit legislative authority for wilderness preservation, Congress is fulfilling its responsibility under the U.S. Constitution to exercise jurisdiction over the public lands.

H.R. REP. NO. 1538, 88th Cong., 2d Sess. 7-8 (1964); *see also* S. REP. NO. 109, 88th Cong., 1st Sess. (1963).

Under the Wilderness Act, Congress intended to create a new category of land in which wilderness purposes would be primary and above all other purposes previously allowed in national forests. These wilderness purposes would then be permanently protected by legislative, not executive, action.

The Senate-passed bill, S. 174, seeks to treat wilderness preservation as a separate use and would grant it alone the added strength of legislative stature. This would have the effect of placing the preservation of wilderness areas on higher plane than any other use.

H.R. REP. NO. 2521, 87th Cong., 2d Sess. 22 (1962).

The intent to elevate wilderness purposes above all other purposes is fully expressed in the text of the Wilderness Act. The purpose in establishing the wilderness areas was to provide “an enduring resource of wilderness . . . unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a). Wilderness areas were intended to establish a place of “primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Finally, and most importantly, Congress intended that all other purposes existing in the wilderness areas be managed to further the wilderness preservation of the reservation.

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area **and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.** Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

16 U.S.C. 1131 § 4(b) (emphasis added). Any purpose previously authorized in the national forests under the Organic Act or the MUSYA continues to exist in wilderness areas, but those purposes must serve and further wilderness preservation.

The Objectors advance several arguments alleging that withdrawals under the Wilderness Act do not constitute reservations of land. First, they argue that wilderness preservation is a secondary purpose and, therefore, cannot support a reservation of water. The Objectors rely on *United States v. New Mexico*, 438 U.S. 696 (1978). In *New Mexico*, the Supreme Court concluded that in enacting the Multiple-Use Sustained-Yield Act of 1960, Congress did not intend to reserve water for purposes secondary to the Organic Act. *Id.* at 714. In arriving at this conclusion, the Court relied on a portion of the MUSYA which reads: “The purposes of sections 528 to 531 of this title are declared to be **supplemental** to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title.” 16 U.S.C. § 528 (emphasis added). The Objectors draw the analogy to the MUSYA by pointing to similar language in the Wilderness Act: “[The Wilderness Act] purposes . . . are hereby declared to be within and **supplemental** to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered.” 16 U.S.C. § 1133(a) (emphasis added). Relying on the “supplemental to” language, the Objectors argue the Wilderness Act purposes are secondary, similar to the MUSYA purposes in *New Mexico*, and cannot support a reservation of water. Whether the

Wilderness Act constituted a reservation of land with newly established primary purposes cannot be answered simply by concluding that the “supplemental to” language under 16 U.S.C. § 1133(a) relegated the Wilderness Act purposes as being secondary to preexisting uses.

As previously indicated, a review of the Wilderness Act leads to the conclusion that the primary purpose of the Act is wilderness preservation. Having determined the primary purpose of the Wilderness Act, the holding in *United States v. New Mexico* can be distinguished. In *New Mexico*, the Supreme Court determined that the MUSYA purposes attached to **preexisting** reservations, i.e., the entire national forest system, as a matter of administration and, therefore, were considered **secondary** purposes. *Id.* at 714; *see infra* § V. The Court found that the MUSYA purposes² by themselves, and without one of the original Organic Act purposes,³ could not support a reservation of land. *Id.* On the other hand, the areas withdrawn under the Wilderness Act constitute specific **re-reservations** of land out of the national forest system in which wilderness preservation is the **primary** purpose of the land reservation. The primary purpose of wilderness preservation authorized under the Wilderness Act may support a reservation of water.

The Objectors next point out that the Wilderness Act and the Central Idaho Wilderness Act do not limit the lands to wilderness purposes. For example, mining claims valid as of December 31, 1983, could continue to be developed and mined, 16 U.S.C. § 1133(d)(3), and grazing established prior to September 3, 1964, could also continue. 16 U.S.C. § 1133(d)(4). The Objectors declare that these specific uses are not compatible with wilderness preservation; and therefore, the preservation of wilderness character cannot be the primary purpose of the reservation. This argument lacks merit. The provisions act as a grandfather clause. Anytime government adopts land regulations, the government must be wary of unconstitutional takings such as inverse condemnation actions.⁴ Congress merely sought to protect the private individuals who may have had real property rights adversely affected by the establishment of wilderness areas.

The Objectors also point out that the provision allowing the President to authorize power projects within the wilderness areas, 16 U.S.C. § 1133(d)(6), is incompatible with wilderness preservation; and therefore, wilderness purposes cannot be the primary purpose of the Wilderness Act. On its face, this section does not relegate wilderness preservation to a secondary purpose. Rather, this section provides a contingency for the executive to decide whether or not, in the public interest, circumstances may require the development of power projects within the wilderness areas.

Next, the Objectors argue that the use of the word “designation” in the language withdrawing the wilderness areas precludes a finding that the wilderness areas constitute a “reservation.” The Objectors’ argument places form over substance. The term “designation” is the phrase traditionally used by Congress to establish

² The MUSYA purposes include outdoor recreation, range, timber, watershed, and wildlife and fish purposes. 16 U.S.C. § 528.

³ The Organic Act purposes were to conserve the water flows and to furnish a continuous supply of timber for the people. *United States v. New Mexico*, 438 U.S. 696, 714 (1978).

⁴ “Inverse condemnation is a taking of private property for a public use without the commencement of condemnation proceedings.” *Higginson v. Wadsworth*, 128 Idaho 439, 441, 915 P.2d 1, 3 (1996).

wilderness areas. For example, in the Arizona Desert Wilderness Act of 1990, land in Arizona was “designated as wilderness and, therefore, as components of the National Wilderness Preservation System.” Arizona Desert Wilderness Act, Pub. L. No. 101-628 § 101(a), 104 Stat. 469, 16 U.S.C. § 1132 (1990). Congress went on to expressly state its intention to reserve water. “[W]ith respect to each wilderness area **designated** by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act.” Id. Pub. L. No. 101-628 § 101(e), 104 Stat. 4469, 4473, 16 U.S.C. § 1132. Congress equates “designations” of land to be “reservations” of land which may necessitate a reserved water right.

Finally, the Objectors argue that a reservation of land may only occur once, at the initial withdrawal from the public domain.⁵ The “one time only reservation” rule proposed by the Objectors lacks legal support because of the consequences resulting from such an interpretation. Under this theory, Congress could never change the purposes for which the land was originally reserved. This would place inordinate importance on land management decisions made years ago. The United States is, however, under an ongoing constitutional mandate to manage its lands for the benefit of the people of this nation. “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory of the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.” U.S. CONST. art. IV, § 3(2).

By definition, land management is a dynamic process where land management decisions reflect the changing values of society. Recognizing the ability of Congress to meet the ever-changing and ongoing needs of land management, this court rejects the “one time only reservation” argument. Federal land may be reserved and reserved again. *See, e.g., United States v. City and County of Denver*, 656 P.2d 1, 30-31 (Colo. 1982) (national forest was re-reserved as a national park); *Arizona v. California*, 373 U.S. 546, 601 (1963) (implied water rights were found in a recreation area previously reserved as a water project).

In adopting the Wilderness Act, Congress established a new land category reserved for the primary purpose of wilderness preservation. Unlike the MUSYA purposes which attached to all preexisting reservations of national forests, the Wilderness Act purpose attaches to certain specifically designated areas set apart from the national forests and reserved as “wilderness areas.” These areas do constitute reservations of land, and wilderness preservation is the primary purpose of the reservations.⁶

B. Entitlement - The Wilderness Act of 1964 Includes an Implied Reservation of Water.

Having determined that the wilderness areas constitute reservations of land with the primary purpose of wilderness preservation, the next inquiry is whether these areas include express or implied reservations of water. Section 4(d)(6)⁷ of the Wilderness Act is the only provision expressly dealing with water in the wilderness areas. It

⁵ As previously indicated, the areas now constituting the wilderness areas were originally withdrawn from the public domain as national forests.

⁶ Other courts have determined that the Wilderness Act constituted a reservation of land and an implied reservation of water. *See, e.g., Sierra Club v. Block*, 622 F. Supp. 842 (D. Colo. 1985) and *Sierra Club v. Lyng*, 661 F. Supp. 1490 (D. Colo. 1987), both vacated for lack of ripeness; *Sierra Club v. Yeutte*, 911 F.2d 1405, 1421 (10th Cir. 1990).

⁷ This section was originally enacted as section 4(d)(7). The Act of October 21, 1978, Pub. L. No. 95-495, 92 Stat. 1650 (1978) repealed former item (5) of section 4(d) and renumbered the remaining items. Some of the parties have erroneously referred to this cite as 4(d)(7).

states: “Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from the State water laws.” 16 U.S.C. § 1133(d)(6). The Objectors argue that use of the phrase “claim or denial” evidences an intent on behalf of Congress not to reserve any water.

Interpretation of section 4(d)(6) requires the application of principles of statutory construction. “Every phrase of a statute [must be interpreted] so that no part is rendered superfluous.” *National Insulation Trasp. Comm’n. v. I.C.C.*, 683 F.2d 533, 537 (D.C. Cir. 1982); *Farr v. United States*, 990 F.2d 451 (9th Cir. 1993); *George W. Watkins Family v. Messenger*, 118 Idaho 537, 540, 797 P.2d 1385 (1990). Where the wording of a statute is vague, the court may consider legislative history to determine the intent of a statute. “Where as here, resolution of a question of federal law turns on a statute and intention of Congress, . . . look first to the statutory language and then to the legislative history if the statutory language is unclear.” *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

Section 4(d)(6) is ambiguous because, on its face, it does not declare whether or not state water law is to govern water rights within the lands withdrawn under the Wilderness Act. If, using the term “denial,” Congress intended state water law to apply, it implicitly did not reserve water in wilderness areas. However, if by using the term “claim,” Congress intended to exempt these areas from state water law, federal law would govern, allowing for reserved water rights.

This ambiguity is resolved by reviewing the legislative history of the Wilderness Act. This history establishes that Congress adopted section 4(d)(6) to maintain the *status quo* in the law governing United States water rights. Congress did not want to take any action which altered the balance in the legal relationship between the states and federal governments with respect to water located within federal reservations.

The Wilderness Act was passed in 1964 when the doctrine of federal reserved rights was in its early phases of evolution. Only one year earlier, the United States Supreme Court, in broad language, stated that the “implied-reservation of water doctrine was equally applicable to other federal establishments such as national recreation areas and national forests.” *Arizona v. California*, 373 U.S. 546, 601 (1963). In this historical context, Congress used the phrase “claim or deny” to ensure that the Wilderness Act would not alter the balance between state and federal jurisdiction over water.

Legislative history demonstrates this intent. Senator Hubert Humphrey, one of the bill’s sponsors, speaks directly to Congress’s intent to maintain this balance:

Paragraph 5, the last in this section, contains language vital to colleagues from the West. When the first wilderness bill was being discussed, some of its opponents charged that its enactment would change **existing** water laws and would deprive local communities of water, both domestic and irrigation. Although this was certainly not the intention of the sponsors, it has seemed necessary to insert a short sentence to remove any doubt.

104 CONG. REC. 11,555 (1958) (emphasis added). Senator Humphrey’s comment reflects a balancing of federal interests in creating statutory wilderness and the states’ interest in preserving, without disruption, existing state water law.

Subsequent Congressional acts using this identical language support this interpretation of section 4(d)(6). Reviewing contemporaneous Congressional acts which employ the same “claim or denial” language is useful where, as a matter of determining legislative intent, it is assumed that Congress does not “paralyze with one hand what it sought to promote with the other.” *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 513 (1981). For

example, in the Wild and Scenic Rivers Act of 1968 (WSRA), Congress used “claim or denial” language with respect to provisions expressly addressing water rights.

The Jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreational river area shall be determined by **established principles of law**. . . . Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from state water law. Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.
16 U.S.C. §§ 1284(c) and (d) (emphasis added).⁸

Senator Frank Church, a sponsor, commenting on the passage of the WSRA, addressed Congress’s intent not to alter the balance of state and federal authority over water.

I would say to the Senator that whatever present law decrees with respect to the priority of rights, among appropriators, that law is left intact by this bill. It is true that the Federal Government can acquire rights by reservation, just as private citizens can acquire rights by appropriation. We sought not to interfere with water law, one way or another.
113 CONG. REC. 21747 (1967). Further responding to questions regarding the effect of WSRA on state and federal relations as to water rights, Senator Church stated:

The whole purpose of the language in the sections to which the Senator has referred . . . was to maintain the status quo with respect to the whole complicated structure of water law.
We have tried diligently to write language which would not embark us upon any new departure in the field of water law.
We seek to leave the law as it stands, to establish a wild rivers system which will not impair or alter or in anyway change existing State or Federal laws concerning water rights.
112 CONG. REC. 431 (1966).

Therefore, it is found that section 4(d)(6) is not intended to establish or disallow any express or implied water right under the Wilderness Act. The language simply preserved the *status quo* between the states and federal government with respect to water rights.

Since section 4(d)(6) does not constitute an express reservation of water, it must be determined whether the wilderness areas include an implied reservation of water. Wilderness preservation is the primary purpose of reservations under the Wilderness Act. *See infra* § IV(A)(1). Therefore, to find an implied reservation, the inquiry is whether wilderness preservation would be entirely defeated without a federal reserved water right.

Whether the purposes of the reservation would be defeated without a reservation of water requires an analysis of the potential impact of the prior appropriation doctrine on the purpose of wilderness preservation. All non-reserved, unappropriated water within the state of Idaho is subject to appropriation. IDAHO CONST. art 15, § 3. The stated purpose of the prior appropriation doctrine is to further domestic and economic development. This is evidenced by the domestic, agricultural, manufacturing, and mining purposes specifically cited by the Idaho Constitution as being beneficial uses of water. *Id.* The arid West has prospered as a direct result of water being appropriated and put to domestic and economic uses.

⁸ Acknowledging that the WSRA addresses water rights is not a finding by this court that the WSRA expressly reserves any amount of water; that issue is not before the court.

Reviewing the text of the Wilderness Act, it is clear that the prior appropriation doctrine is entirely inconsistent with Congress's intent to preserve wilderness character within the designated wilderness areas. Congress determined that wilderness character is not possible with human alteration or control of an area of land.

Wilderness in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are **untrammelled by man**, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of **undeveloped** Federal land retaining its primeval character and influence, without **permanent improvements** or human habitation, which is protected and managed so as to preserve its **natural conditions** and which (1) generally appears to have been affected primarily by the forces of nature, with **imprint of man's work substantially** unnoticeable. . . .

U.S.C. 16 § 1131(c) (emphasis added). Wilderness areas were established under the premise that development is inconsistent with maintenance of the land's "natural conditions." Wilderness character exists where man's influence does not. Congress established, by law, that wilderness character is incompatible with human development. State law appropriation of water for the beneficial uses allowed by the Idaho Constitution is not compatible with the legal definition of wilderness preservation. Appropriation of wilderness water would entirely defeat Congressional intent to preserve wilderness character.

Therefore, Congress impliedly reserved water in the wilderness areas with its establishment in the Wilderness Act. The priority dates for these implied reserved rights correspond to the date each area was designated as a wilderness area: Selway-Bitterroot Wilderness Area, September 3, 1964, priority date; Gospel-Hump Wilderness Area, February 24, 1978, priority date; The Frank Church-River of No Return Wilderness Area, July 23, 1980, priority date.

C. Quantity - The Minimum Amount of Water That Must Be Reserved in Order to Fulfill the Purposes of the Wilderness Reservations Is All Unappropriated Water That May Be Within Each Area.

The United States claims that it is entitled to a reservation of all water naturally flowing in the wilderness areas. The Objectors argue that this amount is not needed to fulfill the purposes of the reservation and that the United States has failed to prove the quantity that is sufficient to fulfill those purposes.

The issue is whether the United States may reserve all unappropriated natural flows without specific quantification of the reserved right. This issue was addressed by the Idaho Supreme Court in *Avondale Irrigation Dist. v. North Idaho Properties, Inc.*, 99 Idaho 30, 577 P.2d 9 (1978). In that case, the United States similarly claimed "the entire natural stream flow" for the rights at issue. *Id.* at 40. The Court concluded that such a claim was allowed even though the right could not be quantified in cubic feet per second or acre feet per year.

The periodic natural variations in stream flows with "just the flexibility which nature provides without interference by man are said to fulfill the varying needs of the United States more effectively than could be done by any attempt to specify these varying needs in terms of cubic feet per second or acre feet. . . . Again, assuming *arguendo* that the United States can prove that a right to the entire natural flow is in fact necessary to accomplish the limited purposes for which the Caribou National Forest was established, then the United States would be entitled to that water right under federal law.

Id.

The claim to all natural flows within the wilderness areas is analogous to the claim in *Avondale*. All non-reserved, unappropriated water in the state of Idaho is subject to appropriation. I.C. § 42-103. This includes water

in the wilderness areas. Appropriation of water within the wilderness areas would defeat Congress's primary purpose of preserving wilderness character. The amount of water minimally sufficient to fulfill Congressional intent is the total amount of unappropriated water within each area, such that none is ever available for future appropriation. *See infra* § IV(A)(3). The "total" amount of water to which the United States is entitled is subject only to "just the flexibility which nature provides without interference by man." *Id.*

The Objectors correctly argue that the court is required to decree quantity, place of use, and period of use as set forth under I.C. §§ 42-1409(c), (g), and (h) respectively. However, the Idaho Supreme Court, in *Avondale*, held that "an Idaho statute may not be applied to a federal reserved water right if such application changes the nature and scope of that federal right." *Id.* at 41 n.15. These wilderness claims cannot be decreed as set forth under I.C. § 42-1409 with a quantity described in cubic feet per second or acre feet per year without defeating the scope of the claim.

Therefore, as a matter of law, the entire amount of unappropriated water constituting the natural flow in each designated wilderness area is the minimum amount necessary to fulfill Congress's intent to preserve and protect the wilderness areas for which claims have been filed in the SRBA. Accordingly, the United States is not required to quantify in cubic feet per second or acre feet per year the entire natural flow within The Frank Church-River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas.

V. MUSYA

THE UNITED STATES IS NOT ENTITLED TO A FEDERAL RESERVED WATER RIGHT FOR THE NATIONAL FORESTS BASED ON THE MULTIPLE-USE SUSTAINED-YIELD ACT BECAUSE IT DOES NOT CONSTITUTE A RESERVATION OF LAND.

The United States has filed 37 claims for federal reserved water rights based on the MUSYA for locations in the Boise, Payette, Clearwater, Nez Perce, Sawtooth, and Salmon-Challis National Forests. For each, the United States claims a June 12, 1960, priority date; the date the MUSYA went into effect. The United States has moved for summary judgment on the basis that the MUSYA supports reserved water rights for these national forests with a 1960 priority. The Objectors argue that the MUSYA is a land management statute not a reservation of land and, therefore, does not entitle the United States to a reserved water right.

The issue presented is whether the MUSYA constitutes a reservation of land. Again, a land reservation is established where land is withdrawn from the public domain and the withdrawn land is reserved and assigned a specific federal purpose. *United States v. City and County of Denver*, 656 P.2d 1, 5 (Colo. 1982). To determine whether there is a reservation of land, the court is required to review the plain and ordinary language of the MUSYA. The purposes of the MUSYA are as follows:

It is the policy of Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

16 U.S.C. § 528.

The issue of whether the MUSYA constituted a reservation with purposes supporting implied reservations of water was addressed by the United States Supreme Court in *United States v. New Mexico*, 438 U.S. 696 (1978). In that case, the United States claimed reserved water rights dating back to enactment of the Organic Act of 1897, based on the MUSYA purposes. *Id.* at 713 n.21. The Supreme Court held that the MUSYA purposes did not support the United States' claimed water rights. *Id.* at 714.

The United States argues that the Court left open the question of whether the MUSYA could support reserved water rights with a priority date of 1960; the date corresponding to its enactment. Using this priority date as a foundation for its claims, the United States argues that *New Mexico* is not controlling because the Court did not have full benefit of the MUSYA's legislative history.⁹ The United States alleges that a full review of that legislative history reveals an intent of Congress to re-reserve the then-existing national forests with the MUSYA's passage in 1960.

The argument that the MUSYA constituted a re-reservation of the national forests is suspect in light of the argument advanced by the United States in its summary judgment motion on the Wilderness Act which is before the court. In distinguishing the Wilderness Act from the MUSYA, the United States conceded:

The State's argument ignores the difference in language between the two provisions and ignores the Supreme Court's premise [in *United States v. New Mexico*] that MUSYA did not create a new reservation of land but only broadened the purposes for which the national forests were to be administered. [*United States v. New Mexico*] 438 U.S. at 713. **Unlike MUSYA, the Wilderness Act reserves and creates a new system of lands, the Wilderness Preservation System, on which former uses are invalidated or curtailed and a new, wilderness preservation is paramount.**

The United States' Opposition To Objectors' Motion For Summary Judgment Regarding The United States' Claims To Federal Reserved Water Rights For Wilderness at 11 n.6 (emphasis added).

This court agrees with the United States' analysis regarding the Wilderness Act purposes and the MUSYA purposes in light of *New Mexico*. Relying on 16 U.S.C. § 528, the Supreme Court determined that the MUSYA purposes were administrative purposes.

The Multiple-Use Sustained-Yield Act of 1960 establishes the purposes for which the national forests "are established and shall be administered." (Emphasis added.) The Act directs the Secretary of the Agriculture to administer all forests, including those previously established, on a multiple-use sustained-yield basis. H.R. 10572, 86th Cong., 2nd Sess., 1 (1960). In the administration of the national forests, therefore, Congress intended the Multiple-Use Sustained-Yield Act of 1960 to broaden the benefits accruing from all reserved national forests. *United States v. New Mexico* at 714.

As administrative provisions, the Court went on to conclude that the MUSYA purposes were secondary to the original Organic Act purposes.

⁹

The United States also relies on that portion of the holding which stated: "We intimate no view as to whether Congress, in the 1960 Act, authorized the subsequent reservation of national forests out of public lands to which a broader doctrine of reserved water rights might apply." *Id.* at n.22.

Thus, in any establishment of a national forest a purpose set out in the 1897 act must be present but there may also exist one or more of the additional purposes listed in [the MUSYA]. In other words, a national forest could not be established just for the purpose of outdoor recreation, range, or wildlife and fish purpose, but such purposes could be a reason for the establishment of the forest if there also were one or more purposes of improving and protecting the forest, securing favorable conditions of water flows, or to furnish a continuous supply of timber as set out in the 1897 act.

Id.

Because the purposes were secondary, the Supreme Court held that the purposes under the MUSYA did not support a reservation of water.

As discussed earlier, the “reserved rights doctrine” is a doctrine built on implication and is an exception to Congress’ explicit deference to state water law in other areas. Without legislative history to the contrary, we are led to conclude that Congress did not intend in enacting the Multiple-Use Sustained-Yield Act of 1960 to reserve water for **secondary** purposes there established.

Id. (emphasis in original).

The holding in *New Mexico* does not change because the United States now claims a 1960 priority date. The *New Mexico* holding controls as to the United States’ claim to a reserved water right under the MUSYA with a 1960 priority. MUSYA did not create a reservation of land. Absent a reservation or re-reservation of land for specific MUSYA purposes, the MUSYA purposes are secondary to the Organic Act purposes. Because the MUSYA purposes are secondary, those purposes cannot support an implied reservation of water. “Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.” *Id.* at 702.¹⁰

In this case, all the United States’ reserved water right claims under the MUSYA involve lands that had been withdrawn under the Organic Act. None of the claims involve specific reservations or re-reservations of land under the MUSYA. Consequently, absent a reservation or re-reservation of land for specific MUSYA purposes, the United States cannot assert that the MUSYA purposes support reserved water rights within the Boise, Payette, Clearwater, Nez Perce, Sawtooth, and Salmon-Challis National Forests.

VI. HELLS CANYON NATIONAL RECREATION AREA

THE UNITED STATES IS ENTITLED TO A FEDERAL RESERVED WATER RIGHT FOR ALL UNAPPROPRIATED FLOWS OF WATER ORIGINATING IN THE HELLS CANYON NATIONAL RECREATION AREA (HCNRA).

A. The HCNRA Is a Reservation of Land.

¹⁰

The extent of the holding in *United States v. New Mexico* is reflected in the dissent’s view of the majority opinion. The dissenting opinion stated: “Although the Court purports to hold that passage of the 1960 Act did not have the effect of reserving any additional water in then-existing forests, see ante, at 3020-3022, this portion of its opinion appears to be dicta.” *Id.* at 718 n.1.

The United States claims one reserved water right with a December 31, 1975, priority date for all unappropriated flows originating in the Hells Canyon National Recreation Area under the HCNRA Act.¹¹ The claim is based on the express provisions of the HCNRA Act.¹² Similar to their position on the Wilderness Act and the MUSYA, the Objectors argue that the HCNRA Act is a land management statute and, therefore, it is not a reservation of land. The issue is resolved by reviewing the express language of the HCNRA Act.

Again, a land reservation is established where land is withdrawn from the public domain and the withdrawn land is assigned a specific federal purpose. *United States v. City and County of Denver*, 656 P.2d 1, 5 (Colo. 1982). Applying this test, it is found that passage of the HCNRA Act resulted in a reservation of land. First, the area was withdrawn from the public domain by its designation under the HCNRA Act. Congress dedicated the “lands and waters” within a 671,000-acre area which would become the HCNRA. 16 U.S.C. § 460gg(b). Second, the reservation was assigned the specific purpose of “assur[ing] that the natural beauty, and historical and archeological value of the Hells Canyon area . . . [is] preserved for this and future generations, and that the recreational and ecological values and public enjoyment of the area are thereby enhanced.” 16 U.S.C. § 460gg(a).

Clearly, the land identified under the HCNRA Act constituted a reservation of land.

B. The HCNRA Act Was an Express Reservation of the Water to Serve the Purpose of the Land Reservation.

In addition to establishing a reservation of land, Congress expressly reserved water for the HCNRA when it provided:

The Hells Canyon National Recreation Area (hereinafter referred to as the “recreation area”), which includes the Hells Canyon Wilderness (hereinafter referred to as “wilderness”, the components of the Wild and Scenic Rivers Act designated in section 3 of this Act, and the wilderness study areas designated in section 3 of this

¹¹ Section 7 of the HCNRA Act states that the purposes include: “(1) maintenance and protection of the free flowing nature of the rivers within the recreation area; (2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit; (3) preservation . . . of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith; (4) protection and maintenance of fish and wildlife habitats” HCNRA Act § 7.

¹² The HCNRA includes lands covered by the Wild and Scenic Rivers Act and the Hells Canyon Wilderness Area. No claim to reserved water rights has been asserted under either of these Acts.

Act, **shall comprise the lands and waters** generally depicted on the map entitled 'Hells Canyon National Recreation Area' dated September 1975, which shall be on file and available for public inspection in the office of the Chief, Forest Service, United States Department of Agriculture. The Secretary of Agriculture, shall as soon as practicable, but not longer than eighteen months after the date of enactment of this Act, publish a detailed boundary description of the recreation area, the wilderness study areas designated in subsection 8(d) of this Act, and the wilderness established in section 2 of this act in the Federal Registrar.

16 U.S.C. § 460gg(b) (emphasis added).

The Objectors argue that 16 U.S.C. § 460gg(b) serves only to define the boundaries of the HCNRA. They conclude that use of the word "water" is not relevant in determining what Congress intended to reserve. This argument lacks merit. The "boundaries" of an area are directly relevant to describe what Congress meant to reserve. Congress described the boundaries of the area to designate what it was reserving.

In reserving water within the boundaries of the HCNRA, Congress exempted from that reservation the main stem of the Snake River and all tributaries both upstream and downstream from the designated land.

(a) Waters upstream from the boundaries of the area.

No provision of the Wild and Scenic Rivers Act (82 Stat. 906), nor of this Act, nor any guidelines, rules, or regulations issued hereunder, shall in any way limit, restrict or conflict with present and future use **of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area**, created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing, including, but not limited to, domestic, municipal, stockwater, irrigation, mining, power, or industrial uses.

(b) Flow Requirements.

No flow requirement of any kind may be imposed on **the waters of the Snake River** below Hells Canyon Dam under the provisions of the Wild and Scenic Rivers Act, of this Act, or any guidelines, rules, or regulations adopted pursuant thereto.

16 U.S.C. § 460gg(b) (emphasis added). This exception was created to ensure that water rights, both upstream and downstream from the boundaries of the HCNRA, would not be undermined by instream flow requirements for the main stem of the Snake River.

The Objectors also argue that 16 U.S.C. 460gg(3)(a) and (b) prohibit any instream flow requirements for tributaries located within the HCNRA. They claim that the language of these sections is ambiguous and that legislative history is necessary to determine Congressional intent. The Objectors cite persuasive comments of Senator Church who stated:

Furthermore, the language makes it equally clear that no flow requirements of any kind may be imposed on the waters of the Snake River below Hells Canyon Dam -that is to say, in the area covered by the bill, as a consequence of the enactment of this legislation.

93 CONG. REC. 120 at 32768.

The Objectors conclude that Senator Church's statement demonstrates that Congress intended there be no flow requirements on any water within the area. To the contrary, it is found that the Act and legislative history cited by the Objectors create an exception meant only to apply to the main stem of the Snake River as well as all tributaries upstream and downstream of the designated areas. Senator Church's comment only referred to instream flow requirements on the main stem of the Snake River "in the area covered by the bill." Furthermore, nothing in the express provisions cited by the Objectors refers to tributaries of the Snake River located within the boundaries of the HCNRA as being exempt from the express reservation of water.

The United States, therefore, is entitled to all unappropriated flows of water originating in tributaries located within the HCNRA with a December 31, 1975, priority date. Congress expressly reserved the "land and waters" within the area designated by the HCNRA Act. Therefore, all unappropriated water originating in tributaries within the HCNRA is reserved to the United States.

VII. ORDER

A. WILDERNESS ACT

1. All unappropriated water within the Selway-Bitterroot Wilderness Area is reserved for the United States with a September 3, 1964, priority date.
2. All unappropriated water within the Gospel-Hump Wilderness Area is reserved for the United States with a February 24, 1978, priority date.
3. All unappropriated water within The Frank Church-River of No Return Wilderness Area is reserved to the United States with a July 23, 1980, priority date.

B. MUSYA

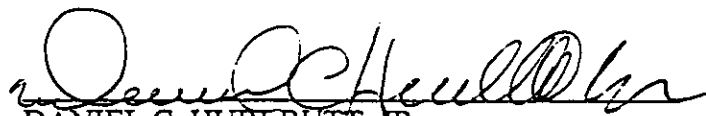
1. The United States *Motion for Summary Judgment* claiming a federal reserved water right based on the Multiple-Use Sustained-Yield Act is **DENIED**.

C. HCNRA ACT

1. All unappropriated flows originating in tributaries located within the Hells Canyon National Recreation Area are reserved for the United States with a December 31, 1975, priority date. No water in the main stem of the Snake River below Hells Canyon Dam is reserved.

IT IS SO ORDERED.

DATED December 18, 1997.



DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication